

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

CAUSE NO. 5:20-cr-10-DCB-FKB

JORDAN RESHARD THOMAS

DEFENDANT

ORDER DENYING MOTION TO SURPRESS PHYSICAL EVIDENCE

This matter is before the Court on defendant Jordan Reshard Thomas's Motion to Suppress Physical Evidence [ECF No. 21] in connection with a handgun found on the defendant during a traffic stop. The Court held a hearing on October 7, 2021, during which the Court heard the testimony of the defendant, the testimony of the two Adams County sheriff's deputies who made the traffic stop and arrest, and the arguments of counsel. At the close of the hearing, defense counsel requested additional time to research and brief the issue of missing evidence, which the Court granted. Having conducted an evidentiary hearing, and having reviewed all submissions of the parties, the hearing transcript, the documents and body camera video admitted into evidence at the hearing, applicable statutory and case law, and being otherwise fully informed of the premises, the Court finds as follows:

Background Facts

Sheriff's Deputy Thomas McGinty, while on routine patrol adjacent to Morgantown Road, Adams County, Mississippi, observed a white 2004 Crown Victoria Ford automobile with two occupants - the driver, Jarvis Turner, and passenger, Jordan Thomas ("Defendant"). [ECF No. 21] at 1-2; [ECF No. 35] ("Hr'g Tr.") at 5:22-6:25. Through the front windshield, Deputy McGinty observed, first, that the passenger did not have a seatbelt in place as required by Mississippi law, and then noticed through the partially opened driver-side window that the driver was also in violation for the same reason. Hr'g Tr. at 6:4-7:13. The vehicle was stopped, and Deputy McGinty made a driver-side approach. Hr'g Tr. at 8:11-12. Deputy McGinty spoke with the driver and saw that he was not wearing a seat belt. Hr'g Tr. at 8:11-12; 9:1-3. A very short time thereafter, Sheriff's Deputy David Nations arrived and made a passenger-side approach of the vehicle. Hr'g Tr. at 8:21-25; Ex. A to [ECF No. 36], audio of 911 calls in CD format (see Notice of Conventional Filing [ECF No. 39])). Both deputies were wearing body cameras, Hr'g Tr. at 10:8<sup>1</sup>, and both detected a strong smell of marijuana coming from

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<sup>1</sup> At the hearing, the Court received into evidence Deputy Nations's bodycam video. Hr'g Ex. G-1. As discussed further below, Deputy McGinty's bodycam video never was included in the case file and, despite efforts, could not be retrieved from the

inside the stopped vehicle. Hr'g Ex. G-1 [ECF No. 31-1] (Nations bodycam video); Hr'g Tr. 35:22; 36:9; 62:11-14; Hr'g Ex. D-5 [ECF No. 33-1] (McGinty report). On cross-examination, Defendant conceded that the two occupants, a short time before, were smoking marijuana. Hr'g Tr. 68:24-69:3. Responding to several questions from the deputies, Defendant was initially untruthful about possessing a firearm, but a pat down ensued for officer protection, and a Smith & Wesson .40 Caliber Pistol was removed from Defendant's waistband. Hr'g Ex. G-1 [ECF No. 31-1] (bodycam video); Hr'g Tr. 62:11-23; 69:16-18; [ECF No. 24] at 2. Defendant was arrested for carrying a concealed weapon. Hr'g Tr. 62:22-23. Defendant also was untruthful to the deputies regarding his arrest record. Hr'g Tr. 69:19-22. Defendant stated, at first, that he never had been arrested, but it was determined that Defendant had been convicted in September 2016 of burglary, a felony offense. Hr'g Ex. G-1 [ECF No. 31-1] (bodycam video); Hr'g Tr. 15:21-16:15; 42:12-20; 69:19-22; [ECF No. 24] at 2.

Claiming that the deputies were lying, Hr'g Tr. 70:14-17, Defendant presented a different version of events during his testimony at the hearing. Defendant testified that both he and the driver of the vehicle were wearing seatbelts and took them

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Sheriff Department's bodycam video storage provider, Axon. Hr'g Tr. at 10:8-19; 26:13-27:7; 34:2-24; 44:14-46:8.

off when the deputies told them to step out of the car. Hr'g Tr. 66:11-12, 10:10-17. He also testified that Deputy Nations (not McGinty) initiated the traffic stop and waited in his unmarked car until Deputy McGinty arrived on the scene. Hr'g Tr. 67:18-68:18; 77:13-19. Defendant's testimony regarding the order of each deputy's arrival at the traffic stop is contrary to the sequence of events recorded on the audio of the 911 calls. Ex. A (911 audio) and Ex. B (affidavit of Adams County Sheriff's Office Deputy Chief Neely regarding call signs for each deputy referenced on the 911 audio) to [ECF No. 36]; see also Notice of Conventional Filing [ECF No. 39].

#### Legal Analysis and Discussion

An officer's reasonable suspicion that there is a traffic violation - including a failure to wear seatbelts - is an appropriate basis for stopping a vehicle. United States v. Portillo-Saravia, 379 F. Supp. 3d 600, 611 (S.D. Tex. 2019) (initial traffic stop was a lawful seizure based on reasonable suspicion that the vehicle's occupants were not wearing seatbelts); see also United States v. Lopez-Moreno, 420 F.3d 420, 430-31 (5th Cir. 2001) ("For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, has occurred, or is about to occur, before

stopping the vehicle"; non-functioning break light provided reasonable basis for stop); United States v. Smith, 355 F. Supp. 3d 544, 549 (N.D. Miss. Nov. 27, 2018), aff'd, 952 F.3d 642 (5th Cir. 2020) ("No party disputes that Solomon had reasonable suspicion to initially stop Smith for driving a vehicle without a visible tag."); Miss. Code Ann. § 63-2-1 ("When a passenger motor vehicle is operated in forward motion on a public road, street or highway within this state, every operator and every passenger shall wear a properly fastened safety seat belt system ... .").

In this case where Defendant offered testimony which is in conflict with statements of witnesses called by the Government, including whether Defendant and the vehicle's driver were wearing seat belts, the Court is burdened with the task of deciding which evidence is more credible. United States v. Jones, 187 F. Supp. 3d 714, 723 (M.D. La. 2016) ("At a suppression hearing, it is well within the trial court's discretion to weigh the evidence and make credibility determinations regarding conflicting testimony.") (internal quotation marks and citation omitted). Having observed the demeanor of the witnesses and having considered their testimony, both under direct and cross-examination, the Court finds that the testimony of Sheriff Deputies McGinty and Nations is more credible. Factored into this analysis is the testimony of

Defendant who, at the evidentiary hearing, acknowledged that at the time of this incident which occurred on April 13, 2020, he was untruthful with the officers on at least two occasions: first, when he denied having a firearm, and second, when he was not truthful about his prior criminal history. The Court therefore finds that Deputy McGinty had the requisite reasonable suspicion to initiate the traffic stop on the basis of a seat belt violation and that the undisputed odor of marijuana coming from the car provided the deputies with the additional reasonable suspicion necessary to prolong the stop. United States v. Brigham, 382 F.3d 500, 509 (5th Cir. 2004) (en banc) (absence of the authorized driver, inconsistent explanations, and presentation of a fictitious I.D., taken together, justified the continued detention of defendants).

The safety pat-down of Defendant and discovery of the concealed weapon in Defendant's waistband also were justified under the circumstances. Terry v. Ohio, 392 U.S. 1, 26-27 (1968) (search "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby" was justified); United States v. Fontenette, No. Crim. 07-60028, 2008 WL 4547507, at \*5 (W.D. La. Oct. 10, 2008) ("...[W]hile the initial stop was to investigate traffic violations, given the odor of burnt marihuana which was immediately detected by the officers when they approached the

vehicle, a reasonable officer ... would have an additional articulable, reasonable suspicion that one of the occupants of the vehicle had illegal drugs on his person, providing further support for the detention and frisk of [defendant]).

In a post-hearing brief, [ECF No. 34], Defendant argues that, because Deputy McGinty's bodycam video was not preserved in the case file, and because a supplemental report from Deputy McGinty and a copy of the warning citation issued to the vehicle's driver also were absent from the file, the deputies acted in bad faith, and the Court should sanction the Government under the doctrine of spoliation. [ECF No. 34] at 2, 6-8; see Silvestri v. General Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001) ("Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation."). Defendant further argues that the failure to preserve video and documentary evidence violates his due process rights under the Fifth and Fourteenth Amendments. Id. at 1-2, 9-12.

Although in the processing of this crime scene and in the documentation which followed, there appear to be time lapses regarding the preparation of a report and some degree of carelessness regarding documentation, the Court finds that these oversights are ministerial in nature, akin to clerical errors,

and in no way diminish the credibility of the testifying officers. On this record, it appears to the Court that the gaps in the case file are most likely attributable to Deputy Nations's new arrival to the Heavy Enforcement Action Team (HEAT) unit and a misunderstanding between the deputies regarding responsibilities for building the case file, but do not amount to bad faith or misconduct on the part of the deputies and do not warrant sanctions as Defendant urges. Hr'g Tr. 18:12-15; 43:9-45:21; see Arizona v. Evans, 514 U.S. 1 (1995) (exclusionary rule does not require suppression of evidence seized in violation of the Fourth Amendment where the erroneous information resulted from clerical errors of court employees); United States v. Herring, 492 F.3d 1212 (11th Cir.2007) (application of the exclusionary rule rejected where there had been an unlawful search conducted incident to an unlawful arrest based on an administrative error).

With respect to Defendant's due process violation claim, Defendant concedes that the never-viewed McGinty bodycam video, warning citation and supplemental report could "either corroborate or contradict" Defendant's version of events. [ECF No. 34] at 10. The Fifth Circuit has described such unavailable evidence as "potentially useful." United States v. McNealy, 625 F.3d 858, 868 (5th Cir. 2010). Having already determined that there was no showing of bad faith by the deputies, the Court



finds that the failure to preserve this potentially useful but uncertain evidence does not constitute a denial of due process. Id. (“[F]ailure to preserve merely potentially useful evidence does not constitute a denial of due process absent a showing of bad faith.”).

Accordingly,

IT IS HEREBY ORDERED that Defendant Jordan Reshard Thomas’s Motion to Suppress Physical Evidence [ECF No. 21] is DENIED; and

IT IS FURTHER ORDERED that the trial date in this matter is hereby reset to the term of Court beginning January 10, 2022.

SO ORDERED, this the 5th day of November, 2021.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE